

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX
DIGITAL GROUP LLC; DAVID
SCHAEFER; JORDAN GREEN;
JEFFREY CONWAY; and JAMES MAY,

Defendants.

No. 2:21-cv-811-TSZ

SUPPLEMENTAL DECLARATION OF
WILLIAM C. RAVA IN SUPPORT OF
PLAINTIFF BUNGIE, INC.'S REPLY IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT

EXHIBIT 41
FILED UNDER SEAL

I, William C. Rava, declare as follows:

1. I am an attorney licensed to practice law before the courts of the State of Washington. I am a Partner at Perkins Coie LLP, and counsel in this action for Plaintiff Bungie, Inc. ("Bungie" or "Plaintiff"). I submit this declaration in support of Plaintiff Bungie, Inc.'s Reply in Support of Its Motion for Summary Judgment. I have personal knowledge of the facts stated herein and, if called upon, could and would testify competently thereto under oath.

2. Attached hereto as **Exhibit 37** are true and correct copies of excerpts of Bungie's Objections and Responses to Phoenix Digital Group LLC's First Set of Interrogatories dated September 12, 2022.

RAVA DECL. ISO BUNGIE'S REPLY ISO
MOT. FOR SUMMARY JUDGMENT
(No. 2:21-cv-811-TSZ) – 1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

5. Attached hereto as **Exhibit 40** are true and correct copies of additional excerpts from the March 23, 2023 deposition of James May.

6. Attached hereto as **Exhibit 41** are true and correct copies of excerpts from the June 23, 2023 deposition of Scott Kraemer.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of August, 2023.

/s/William C. Rava
William C. Rava

EXHIBIT 37

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX DIGITAL
GROUP LLC; DAVID SCHAEFER; JORDAN
GREEN; JEFFREY CONWAY; JAMES MAY,

Defendants.

No. 2:21-cv-811-TSZ

BUNGIE, INC.'S OBJECTIONS AND
RESPONSES TO DEFENDANT
PHOENIX DIGITAL GROUP LLC'S
FIRST SET OF INTERROGATORIES

PRELIMINARY STATEMENT

The objections and responses set forth below are based upon such information that is presently available to Bungie. Bungie provides these objections and responses without prejudice to its right to assert additional objections and amend or supplement any or all of the information contained in its responses as additional facts are ascertained, analyses are made, and research is completed. These objections and responses are made without waiving or intending to waive, but on the contrary preserving:

a. all assertions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the responses or subject matter thereof, in any proceeding in this action, including trial, or in any other action;

12. Bungie further objects to Definition 2 of Phoenix Digital’s First Set of Requests for Production, which have been incorporated into Phoenix Digital’s First Set of Interrogatories on the grounds that it is vague and ambiguous, specifically as to the meaning of the term “indirectly.” For purposes of these objections and responses, Bungie interprets this definition to encompass only legal entities owned directly by Bungie.

RESPONSES

INTERROGATORY NO. 1:

Identify by specific reference, (e.g., page and line number) to any documents produced by Bungie in response to Phoenix Digital’s Document Interrogatories Nos. 1-4, served June 23, 2022, any and all portions of the “Destiny...computer software code” that you contend have been “copied” by Defendants as alleged in Paragraph 105 of the Amended Complaint filed May 19, 2022.

RESPONSE TO INTERROGATORY NO. 1:

In addition to its General Objections, Bungie objects to this Interrogatory as premature. Despite prior representations regarding their possession of the source code for the cheat software at issue, Defendants have not produced such source code in response to Bungie’s discovery requests. Bungie expressly reserves its rights to supplement this response when such source code has been produced. Bungie further objects to this request as vague, ambiguous and unduly burdensome. Identifying copied object code for *Destiny 2* by “page and line number” is not reasonably feasible or practical.

Subject to and without waiving these objections, Bungie responds as follows: Bungie contends that Defendants have made copies of the entirety of the object code for *Destiny 2*, as well as specifically copied and modified object code that corresponds to the data structures for player positioning, combatant positioning, rendering functions and the angle deltas for mouse movements. Bungie is willing to meet and confer regarding other methods to identify the copied object code.

1 Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and
 2 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more
 3 information.

4
 5 **INTERROGATORY NO. 2:**

6 Identify all "derivative works" that Bungie contends have been created, prepared and/or
 7 distributed by Defendants as alleged in Paragraph 105 of the Amended Complaint filed May 19,
 8 2022.

9 **RESPONSE TO INTERROGATORY NO. 2:**

10 In addition to its General Objections, Bungie objects to this Interrogatory as premature.
 11 Despite prior representations regarding their possession of the source code for the cheat software
 12 at issue, Defendants have not produced such source code in response to Bungie's discovery
 13 requests. Bungie expressly reserves its rights to supplement this response when such source code
 14 has been produced.

15 Subject to and without waiving these objections, Bungie responds as follows: Bungie
 16 contends that Defendants have created, prepared, and/or distributed derivative works of Bungie's
 17 *Destiny 2* copyrights in at least the following ways: incorporating software code derived from
 18 Bungie's *Destiny 2* data structures into Defendants' *Destiny 2* cheat software; incorporating
 19 software code that consists of reverse-engineered software code from *Destiny 2* into Defendants'
 20 *Destiny 2* cheat software; distributing the *Destiny 2* cheat software that injects code into the *Destiny*
 21 *2* game engine while running, thus creating a derivative work; and creating a modified display of
 22 *Destiny 2*'s original audiovisual output.

23 Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and
 24 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more
 25 information.

1 Dated: September 12, 2022

By: s/ Jacob P. Dini

William C. Rava, Bar No. 29948

Jacob P. Dini, Bar No. 54115

Perkins Coie LLP

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JDini@perkinscoie.com

Attorneys for Plaintiff BUNGIE, INC.,

26
BUNGIE'S OBJ. AND RESP. TO PHOENIX
DIGITAL'S FIRST SET OF ROGS – 12
(NO. 2:21-CV-811-TSZ)

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I, Edward Kaiser, am an Engineering Lead for Bungie, Inc. and I believe, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information, and belief.

Executed on September 12, 2022.

By: Edwi
Edward Kaiser

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that they served a copy of the foregoing Bungie, Inc.'s Objections and Responses to Defendant Phoenix Digital Group LLC's First Set of Interrogatories to the following on September 12, 2022, via email at the address below:

Philip P. Mann, WSBA No. 28860
Mann Law Group PLLC
403 Madison Ave. N.
Suite 240
Bainbridge Island, WA 98110
Email: phil@mannlawgroup.com

Dated: September 12, 2022

s/ Christian W. Marcelo
Christian W. Marcelo

EXHIBIT 38

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX
DIGITAL GROUP LLC; DAVID
SCHAEFER; JORDAN GREEN;
JEFFREY CONWAY; JAMES MAY,,

Defendants.

No. 2:21-cv-811-TSZ

BUNGIE, INC.'S SUPPLEMENTAL
OBJECTIONS AND RESPONSES TO
DEFENDANT PHOENIX DIGITAL
GROUP LLC'S FIRST SET OF
REQUESTS FOR PRODUCTION

PRELIMINARY STATEMENT

The objections and responses set forth below are based upon such information that is presently available to Bungie. Bungie provides these objections and responses without prejudice to its right to assert additional objections and amend or supplement any or all of the information contained in its responses as additional facts are ascertained, analyses are made, and research is completed. These objections and responses are made without waiving or intending to waive, but on the contrary preserving:

a. all assertions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the responses or subject matter thereof, in any proceeding in this action, including trial, or in any other action;

SUPPLEMENTAL RESPONSES

REQUEST FOR PRODUCTION NO. 1:

A true and correct copy of the source code for the “Destiny 2” work identified in Copyright Registration No. TX 8-933-655.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Subject to and without waiving its General Objections, Bungie will produce non-privileged documents responsive to this Request that are in Bungie’s possession, custody, or control, if any, that are located after a reasonably diligent search.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Pursuant to the parties’ September 7, 2022 meet and confer, Bungie will produce non-privileged documents sufficient to show the portions of the object code of the “Destiny 2” work identified in Copyright Registration No. TX 8-933-655 that were copied that are in Bungie’s possession, custody, or control, if any, that are located after a reasonable search.

REQUEST FOR PRODUCTION NO. 2:

A true and correct copy of the source code for the “Destiny 2: Beyond Light” work identified in Copyright Registration No. TX 8-933-658

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Subject to and without waiving its General Objections, Bungie will produce non-privileged documents responsive to this Request that are in Bungie’s possession, custody, or control, if any, that are located after a reasonably diligent search.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Pursuant to the parties’ September 7, 2022 meet and confer, Bungie will produce non-privileged documents sufficient to show the portions of the object code of the “Destiny 2: Beyond Light” work identified in Copyright Registration No. TX 8-933-658 that were copied that are in Bungie’s possession, custody, or control, if any, that are located after a reasonable search.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Pursuant to the parties' September 7, 2022 meet and confer, Bungie will produce non-privileged documents responsive to this request that are in Bungie's possession, custody, or control, if any, that are located after a reasonable search.

Dated: September 16, 2022

By: /s/ Jacob P. Dini

William C. Rava, Bar No. 29948
Christian W. Marcelo, Bar No. 51193
Jacob P. Dini, Bar No. 54115
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JDini@perkinscoie.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that they served a copy of the foregoing Bungie, Inc.'s Supplemental Objections and Responses to Defendant Phoenix Digital Group LLC's First Set of Requests for Production to the following on September 16, 2022, via email at the address below:

Philip P. Mann, WSBA No. 28860
Mann Law Group PLLC
403 Madison Ave. N.
Suite 240
Bainbridge Island, WA 98110
Email: phil@mannlawgroup.com

Dated: September 16, 2022

/s/ Jacob P. Dini
Jacob P. Dini

CERTIFICATE OF SERVICE
(No. 2:21-cv-811-TSZ)

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EXHIBIT 39



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September 16, 2022

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VIA EMAIL

Philip P. Mann
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Bainbridge Island, WA 98110
phil@mannlawgroup.com

**Re: *Bungie, Inc. v. AimJunkies.com, et al.*, No. 2:21-cv-811 (W.D. Wash.)
Bungie, Inc., W.D. Wash. Document Production Vol. 2**

Dear Mr. Mann:

We are producing via LeapFile Bungie, Inc.'s second document production Volume BUNGIE_WDWA_002, bearing Bates Nos. BUNGIE_WDWA_0000481 through BUNGIE_WDWA_0000615. Confidential and Highly Confidential documents are marked accordingly and shall be treated as such under the Stipulated Protective Order entered in this case. Dkt. No. 60.

You will receive an email from LeapFile that will include instructions for accessing the documents. The .zip file containing BUNGIE_WDWA_002 is password protected, and the password is:

Gc%fdB7Ngargb\$q

Please let me know if you have any questions about how to access the production.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. P. Dini".

Jacob P. Dini

JPD:jpd

EXHIBIT 40

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

3 BUNGIE, INC.)

4 Plaintiff,)

5 vs.)

CASE NO. 2:21-cv-811-TSZ

6 AIMJUNKIES.COM; PHOENIX)
7 DIGITAL GROUP LLC; DAVID)
8 SCHAEFER; JORDAN GREEN;)
9 JEFFREY CONWAY; and JAMES)
MAY,)

9 Defendants.)

CERTIFIED COPY

10

11

12 ORAL VIDEOTAPED ZOOM DEPOSITION

13 JAMES MAY

14 March 23, 2023

15

16 ORAL VIDEOTAPED ZOOM DEPOSITION OF JAMES MAY,

17 produced as a witness at the instance of the Plaintiff

18 and duly sworn, was taken in the above-styled and

19 numbered cause on the 23rd day of March, 2023, from

20 7:58 a.m. to 11:45 a.m., via Zoom, before Debra K.

21 Zebert, Registered Professional Reporter, reported by

22 computerized stenotype machine, pursuant to the Federal

23 Rules of Civil Procedure and the provisions stated on

24 the record or attached hereto.

25 Job No.: 971992

APPEARANCES

1

2

3 FOR PLAINTIFF:

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8 206.359.8000
9 JDini@perkinscoie.com

7

FOR DEFENDANT, JAMES MAY:

8

9 Philip P. Mann, Esquire
10 MANN LAW GROUP PLLC
11 403 Madison Avenue, North, Suite 240
12 Bainbridge Island, Washington 98110
13 206.855.8839
14 phil@mannlawgroup.com

12

ALSO PRESENT:

13

14 Scott Norton, Videographer
15 James Barker, In-house Counsel, Bungie, Inc.
16 Ed Kaiser, PhD

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1 THE VIDEOGRAPHER: Good morning, everyone.
2 Here begins the remote deposition of James May in the
3 matter of Bungie, Inc. versus AimJunkies.com et al.
4 This case is in the United States District Court,
5 Western District of Washington, at Seattle. The case
6 number is 2:21-CV-811-TFZ. Today's date is Thursday,
7 March 23rd, 2023, and the current time is 7:58 a.m.
8 Pacific time.

9 This is a remote deposition through Zoom
10 videoconferencing. Our videographer is Scott Norton,
11 appearing on behalf of Centext Litigation Services.
12 Would counsel please introduce yourselves, state whom
13 you represent.

14 MR. DINI: My name is Jacob Dini. I'm
15 counsel for Bungie. I'm also joined today by in-house
16 counsel, James Barker -- or in-house counsel for Bungie.

17 MR. MANN: My name is Philip Mann. I'm
18 here on behalf of Mr. May.

19 THE VIDEOGRAPHER: Thank you both. Our
20 reporter today is Kathy Zebert, with Centext. Would the
21 reporter please swear in our witness.

22 JAMES MAY,
23 having been first duly sworn, testified as follows:

24 ***

25 EXAMINATION

1 accessed your external hard drive?

2 A. Yes.

3 Q. What was that based on?

4 A. The documents that were provided by Bungie.

5 Q. Anything else?

6 A. They could have accessed anything on that drive
7 just -- other than the files if they were able to access
8 that file -- or those files. They could have poked
9 around any file they wanted to on that drive.

10 Q. Was there any damage to your external hard
11 drive as a result of Bungie's alleged access to it?

12 A. No.

13 Q. Were you ever unable to use that external hard
14 drive after Bungie accessed it?

15 A. No.

16 Q. Do you have any reason to believe that Bungie's
17 access to your -- alleged access to your hard drive
18 affected the performance of that hard drive?

19 A. No.

20 Q. Do you still have that hard drive?

21 A. Yes.

22 Q. Are the files on that external hard drive that
23 you allege Bungie accessed in the same condition that
24 they were after Bungie allegedly accessed them?

25 A. I believe so.

1 Q. Have you modified any of the files on that hard
2 drive in the time since Bungie allegedly accessed the
3 hard drive?

4 A. Yes, I've modified other files, but not the
5 ones that I produced to Bungie.

6 Q. So, Mr. May, why did you get new hardware if
7 there was nothing wrong with the old hardware, as a
8 result of Bungie's alleged access?

9 A. Because they could track my old hardware
10 easily. Anybody can. It was out there for anybody to
11 see through this whole thing.

12 Q. Did you find any indications that Bungie was
13 tracking any of your hardware on the computer itself?

14 A. They said they had hardware ID -- hardware
15 ID-banned me, so they were definitely tracking my
16 hardware.

17 Q. Did that hardware apply to your monitor?

18 A. Yes.

19 Q. So you believe that Bungie was -- was tracking
20 your -- excuse me. So you believe that Bungie was
21 monitoring your hardware -- or your -- your monitor?

22 A. I believe that Bungie was monitoring any
23 hardware, as a lot of companies do. They monitor
24 hardware.

25 Q. Okay. Mr. May, can you please identify every

1 technological measure that you allege Bungie

2 circumvented to access your computer?

3 A. Yeah, sure. They got around the firewall by
4 already being on my computer when the game was loaded.
5 I had a VPN on. I mean, I had several passwords on my
6 work folders.

7 Q. Any others besides firewall, VPN and passwords?

8 A. Firewalls, VPN, passwords. I can't think of
9 any others off the top of my head.

10 Q. So the only technological measures that you
11 allege Bungie circumvented in accessing your computer
12 are firewalls, VPN and passwords?

13 A. Correct. Those are the ones I believe right
14 now. There could be -- well, I don't know of any other
15 technological measures right now that I had in place.
16 So I believe that's it.

17 Q. Do you -- that was going to be my next
18 question. Do you have any technological measures other
19 than those three that protect access to your computer?

20 A. I believe those are the only ones.

21 Q. Do you have any technological measures other
22 than firewalls, VPNs or passwords that protect any files
23 or folders on your computer?

24 A. Yes, I have passwords for my work folders.

25 Q. Okay. So -- but that's encompassed within the

1 REPORTER'S CERTIFICATE

2 ORAL VIDEOTAPED ZOOM DEPOSITION OF JAMES MAY

3 March 23, 2023

4

5 I, the undersigned Registered Professional Reporter,
6 certify that the facts stated in the foregoing pages are
7 true and correct.

8 I further certify that I am neither attorney or
9 counsel for, related to, nor employed by any parties to
10 the action in which this testimony is taken and,
11 further, that I am not a relative or employee of any
12 counsel employed by the parties hereto or financially
13 interested in the action.

14 SUBSCRIBED AND SWORN TO under my hand on this the
15 28th day of March, 2023

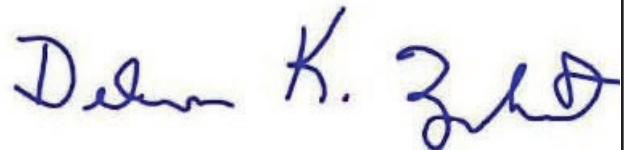
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19

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21

Debra K. Zebert, BS, RPR, CSR
RPR No. 839015

22

Expiration: 12/31/23

23

24

25

EXHIBIT 41
FILED UNDER SEAL